IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 5133 of 2007()

CRIME NO.216/2006 OF THENHIPALAM POLICE STATION
NOW CBCID CRIME NO.78/CR/S3/07

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PETITIONERS/ACCUSED 3 & 2:

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1. P. RADHAKRISHNAN, S/O. CHOYIKUTTY,
   KRISHNA BHAVAN, P.O. PULLIPARAMBA, CHELEMBRA AMSOM
   DESOM, TIRURANGADI TALUK, MALAPPURAM DISTRICT.

2. P. VELAYUDHAN, S/O. THAMI,
   PUZHAI HOUSE, CHELEMBRA P.O.,CHELEMBRA AMSOM,DESOM
   TIRURANGADI TALUK, MALAPPURAM DISTRICT.

BY ADV. SMT.LATHA PRABHAKARAN
SRI.K.M.JAMALUDHEEN

RESPONDENTS: COMPLAINANT-STATE:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5133 of 2007

Dated this the 22nd day of August 2007

O R D E R

Application for anticipatory bail. Petitioners are accused 3 and 2 in a crime registered inter alia under Sections 420 and 406 I.P.C. They are Secretary and Assistant Secretary of a Co-operative Bank. The crux of the allegations against them is that they, in collusion with the first accused and others, had accepted spurious gold ornaments as security and helped the principal accused to siphon out funds of the co-operative society. Investigation is in progress. Investigation has revealed that a huge amount of more than Rs.14,00,000/- has been siphoned out of the bank's funds pledging spurious gold of 2471 grams. Investigation is in progress. The petitioners apprehend imminent arrest. The learned counsel for the petitioners submits that the petitioners are absolutely innocent of the allegations raised against them. There is no expert appraiser appointed by the bank. The petitioners have to take the decisions to accept or reject the gold security on the basis of their personal long experience. It is further submitted that the Director Board has to sanction the loan and the petitioners have only the obligation to receive the gold as security and pay the amounts. In fact, on coming to know that the principal accused had committed identical fraud in respect of his transaction

with other banks, the petitioners had initially lodged a complaint against the principal accused. If they did have any contumacious or culpable responsibility, it is unlikely that they would have initiated any such proceedings. It is, in these circumstances, prayed that the petitioners may be granted anticipatory bail and saved of the undeserved trauma of arrest and detention.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the available inputs including the confession statement of the principal accused clearly show the contumacious and culpable involvement of the petitioners in the huge fraud that is played by the bank. The learned Public Prosecutor submits that at any rate, this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioner. This is an eminently fit case where the petitioners must be left to seek the ordinary and regular course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail. The learned Public Prosecutor further submits that an equipment to assess the purity of gold was made available to the officers of the bank prior to the date of commission of the offence in respect of some transactions.

3. I have considered all the relevant inputs. At this early

stage of investigation, I shall not venture to embark on a detailed discussion on the acceptability of the allegations and the credibility of the data collected. Powers under Section 438 Cr.P.C have to be invoked sparingly and in exceptional cases in aid of justice. Such jurisdiction cannot be invoked as a matter of course.

4. Having considered all the relevant inputs, I am unable to find any features in this case that would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I agree with the learned Public Prosecutor that this is a fit case where the petitioners must appear before the learned Magistrate or the investigating officer having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007